IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 108 of 2001

RIGHA KARAN
V/S
LRS OF RAM PAL

Mr. DK PARIHAR, for the appellant / petitioner

Mr. RR NAGORI, for the respondent

Date of Order : 2.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Learned counsel for the appellant wants adjournment. The matter was listed on 26.10.2006. On that day, the appellant appeared in person and submitted that he wanted to change the counsel, and on that ground adjournment was sought. The matter being of 2001, I did not find any ground to grant adjournment. However, in the interest of justice, the matter was adjourned to today.

It may be observed that on that day it was made clear to the appellant in person that today (2.11.2006) no further adjournment shall be granted, and he may take care to do whatever, as may be necessary to ensure that the matter is argued on 2.11.2006, and on his understanding this, and assuring to that effect the adjournment was granted. In these circumstances, I do not find any

sufficient ground to grant any further adjournment, simply because the new counsel has filed Vakalatnama on behalf of the appellant on 31.10.2006. It is a different story that as Vaklatnama has already been filed on 31.10.2006, sufficient time has already become available to the appellant to argue the appeal by now. All this was orally told to the learned counsel, and counsel was requested to argue the matter, whereupon learned counsel submitted that the application filed by him for adjournment should be accepted, and if that application is not accepted, then he should be given time to argue, as to whether the adjournment should be given in this case today, or not, meaning thereby, that even on whatever pretext, as may be possible, the learned counsel was insistent on matter being adjourned today. The request for adjournment and the application for adjournment, in view of the above, are refused.

Learned counsel thereafter submitted that he is not prepared to argue the matter, and when I observed that if the learned counsel is not ready to argue the matter, the matter may be dismissed in default, whereupon he submitted, that as he is present the matter cannot be dismissed in default, and then he is not prepared to argue the matter, and therefore, the matter should be adjourned. In my view, the request of learned counsel is clearly calculated to maintain the insistence for adjournment of

this old matter, despite the request for adjournment having been refused by dictating the order upto above para.

Thereafter when the learned counsel was informed that the Court has already gone through the impugned judgments and record which have been requisitioned, learned counsel submitted that when the Court has gone through the record, the Court may decide the appeal on merits.

I have gone through the judgments and the record of the learned courts below. The plaintiff filed the present suit for possession, alleging to have purchased the land from Gram Panchayat on 21.5.1967, and having obtained Patta, and thereafter having excavated foundation and raised boundary. According to the plaintiff it was in January, 1973 that the defendant borrowed the Bara for storing the building material, as the defendant was constructing his house, and assured to vacate upto 15.6.1973. However, the defendant did not vacate, rather in 1975 he removed the boundary wall, and included the land in his house, and erected a Jhumpa. On plaintiff's asking to vacate the possession, the defendant started picking up quarrel. According to the defendant he is in possession since Samvat 2010, and had fire wood stall which continued upto 2015, and the Gram Panchayat had no right to sale the land and grant Patta, rather the defendant was entitled to get Patta, for which he had taken proceedings. The plea of

adverse possession was also taken. Learned trial court found, that if the defendant alleges to be in possession, and had taken possession in the hope that he would obtain Patta, it cannot be said that the possession was adverse. It was also found that the Gram Panchayat had initiated proceedings against the defendant for dispossession, whereon the defendant filed an application Ex.9, and that the defendant himself had participated in the auction proceedings of this plot, and has projected an afterthought story of auction proceedings having not been taken. Admittedly the Patta has not been got cancelled. Then, Ex. 6 was considered, which is a document of mortgage, by the defendant, wherein the present land has been acknowledged to be of plaintiff. It was also found that even if it were to be assumed that the defendant is in possession since 2010, still as on the date of auction his possession was only 13-14 years old, which is not sufficient to perfect title against Panchayat. Then the learned trial court also found the Patta to have been validly granted. Deciding issue no.2 it was held by the learned trial court that the defendant is in permissive possession of the property as alleged by the plaintiff.

In appeal these findings have been affirmed. In my view, the findings about the defendant being in permissive possession, himself having participated in the auction proceedings, about his having admitted the land to be of

the plaintiff in Ex.-6 etc., his having clearly given in writing in Panchayat to be not having any objection about the possession over the land in question, and that he has removed his possession, vide Ex.9 in the year 1965, being application given by him to the Sarpanch, along with Ex.-7, being the order sheet of Panchayat file, bearing signature of the defendant, and his having participated in the auction proceedings, are all pure findings of fact recorded by the two learned courts below, which are not vitiated on any of the grounds available under Section 100 C.P.C. Thus, I do not find any error in the impugned judgments and decrees passed by the learned courts below.

The appeal thus does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/